

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

Amendments to the Drawings

A proposed replacement drawing sheet is attached hereto. The attached sheet includes changes to Figures 1(a) and 1(b). This sheet replaces the original sheet including those figures.

In this proposed replacement sheet, Figures 1(a)-(b) have been annotated with reference numeral 12 for the finger grips.

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

Information Disclosure Statement

Attached hereto are several sheets of Form PTO/SB/08A listing documents for consideration in connection with the above-captioned application. A copy of each of the references is enclosed.

As the Patent Office is aware, the present application is related to two previously issued U.S. patents. Those patents are U.S. Patent No. 6,321,931, and U.S. Patent No. 6,357,620 (which is a continuation-in-part of the '931 patent).

Please note that both patents have been asserted in litigation against parties accused of infringement. That litigation was captioned: *Nouri E. Hakim v. Cannon Avent Group, PLC, Cannon Rubber Limited, and Avent America, Inc.*, Civil Action No. 3-02-1371 (U.S. District Court for the Western District of Louisiana). In the litigation, Defendants asserted that all of the asserted claims of the patents are invalid over prior art and not infringed. The District Court held the claims of the '931 patent not infringed by Defendants' products, and held the claims of the '620 patent invalid. A copy of the two Magistrate Reports regarding the patents (which were both adopted by the District Court) are attached to sheet 1 of Form PTO/SB/08A.

It is submitted that the court's decisions were in error. In the report regarding the '620 patent, for example, the magistrate ruled that the particular words used in the claims do not matter. *See*, Magistrate's Report and Recommendation of 02-02-2005 re U.S. Patent No. 6,357,620 (Civ. Action No. 3-02-1371, U.S. District Court, W.D. Louisiana) at pages 11-12. Counsel respectfully submits that this reflects a misunderstanding of fundamental patent law principles, which state that the exact words used in the claims not only matter, but are critical to determining validity and infringement. *See e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). Accordingly, Mr. Hakim has appealed both decisions to the U.S. Court of Appeals for the Federal Circuit. *See, Nouri E. Hakim, Plaintiff-Appellant, v. Cannon Avent Group, PLC, Cannon Rubber Limited, and Avent America, Inc.*, Appeal No. 05-1398 (CAFC 2005). We are currently awaiting a decision from the Federal Circuit on that appeal.

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

Please further note that in the District Court litigation and in the appeal, the following references were particularly relied upon by Defendants:

Italian Patent No. IT 594,286;
European Patent Application No. 0 388 828 of ICA S.P.A.;
U.S. Patent No. 5,250,266 issued to Kanner;
U.S. Patent No. 4,324,097 issued to Schmitt;
U.K. Patent Application No. GB 2,266,045A of Haberman;
U.S. Patent No. 5,706,973 issued to Robbins III et al.;
U.S. Patent No. 5,542,670 issued to Morano;
U.S. Patent No. 5,890,620 issued to Belcastro;
U.S. Patent No. 5,079,013 issued to Belanger;
U.S. Patent No. 5,890,621 issued to Bachman, et al.;
U.S. Patent No. 5,186,347 issued to Freeman, et al.;

Copies of all those references (including a translation of the Italian reference) are attached to sheet 2 of Form PTO/SB/08A.

A copy of the International Search Report ("ISR") from PCT/US98/17379, and the International Search Report from PCT Application No. PCT/US99/19238, are attached to sheet 3 of Form PTO/SB/08A. The Supplementary European Search Report from pending European Patent Application No. 98 94 3302, and the Supplementary European Search Report ("SESr") from European Patent Application No. 99 94 3860 (which issued as European Patent No. EP 1 104 252 B1), are also attached to sheet 3 of Form PTO/SB/08A.¹

¹ The disclosure of PCT/US98/17379 corresponds to the '931 patent application, and the disclosure of PCT Application No. PCT/US99/19238 corresponds to the '620 patent application. The disclosure of European Patent Application No. 98 94 3302 corresponds to the '931 patent application, and the disclosure of European Patent Application No. 99 94 3860, corresponds to the '620 patent application.

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

References cited in the ISRs and SESRs and/or cited in foreign patent offices, are all attached to sheets 4-6 of form PTO/SB/08A (other than those references already listed on prior sheets).

Various other references brought to Applicant's or counsel's attention during the litigation are listed on sheets 7-11 of Form PTO/SB/08A (other than those references already listed on prior sheets).

In addition, U.S. Patent No. 6,994,225 has also issued to Applicant ("the '225 patent") for further no-spill cup inventions, and is hereby brought to the Examiner's attention. References which were cited in the '225 patent are attached to sheets 12-13 of Form PTO/SB/08A (other than those references already cited on prior sheets).

The citation of any reference herein is not intended to as an admission or indication that is prior art or relevant, but rather is intended to ensure that it is of record for the Examiner's consideration. Accordingly, it is respectfully requested that all of the references be considered by the Examiner, that the pending claims be examined in view thereof, and that the attached form be initialled to confirm the same.

It is submitted that none of the references of record in the present and parent application expressly teach or suggest the claimed invention, when properly and thoroughly considered individually or in combination.

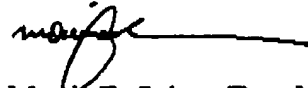
It is believed that this disclosure, pursuant to 37 C.F.R. §§ 1.97 and 1.98, complies with the requirements of 37 C.F.R. § 1.56 and the Manual of Patent Examining Procedure. *See e.g.*, MPEP §707.05(b). If for some reason the Patent Office considers otherwise, it is respectfully requested that the undersigned be contacted at the telephone number listed below so that any deficiencies can be immediately remedied.

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

Authorization is hereby provided to debit any and all amounts required in connection with this submission from Deposit Account No. 50-1604.

Dated: January 18, 2007

Respectfully submitted,



Morris E. Cohen (Reg. No. 39,947)
1122 Coney Island Avenue, Suite 217
Brooklyn, New York 11230
(718) 859-8009 (telephone)
(718) 859-3044 (facsimile)

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

Remarks

Receipt is acknowledged of the Office Action dated August 10, 2006 in the above-captioned matter. Further thereto, reconsideration of the application and a three month extension of the time provided for response is requested. A Request for Continued Examination (RCE) and Information Disclosure Statement (IDS) are also provided herein. The Commissioner is authorized to charge all amounts due to Deposit Account 50-1604, including, but not limited to, the fees for the extension of time, the RCE, the IDS, and the new claims.

Objection to the Drawings

In the Office Action, the drawings were objected to under 37 C.F.R. §1.83(a) on the grounds that the finger grips must be shown on the drawings or else the feature must be canceled from the claim. In response, it is noted that the finger grips were illustrated on the drawings as originally filed. For example, Figure 1(a), for example, shows the finger grips around the rim of cap 11.

Counsel has added reference numeral 12 to Figure 1 to indicate where this feature is located. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

Claim Rejections under 35 U.S.C. §112

In the Office Action, claims 44 and 62 were rejected under the written description requirement of 35 U.S.C. §112, first paragraph on the grounds that the specification does not refer to the finger grips feature. In response, it is respectfully submitted that the application and claims fully comport with the written description requirement under Section 112. The feature in question is recited in the specification at paragraph 0047 ("In a preferred embodiment, finger grips are provided on the outside of the cap, such as grooves or the like. These grips facilitate removal and application of the cap, particularly in embodiments requiring the screwing of the cap on and off of the cup.").

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

As noted above, counsel has added reference numeral 12 to the drawing to indicate where this feature is located. In addition, the specification has been amended herein to add this reference numeral to the text. As the finger grips were described in the specification and illustrated in the drawings as originally filed, no new matter has been added. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Information Disclosure Statement

An Information Disclosure Statement (IDS) is enclosed herewith. It is requested that the claims be examined in view of each of the references cited in the IDS. Several sheets of Form PTO/SB/08A are attached to the faxed copy of the present response, listing the references that are being provided for the Examiner's consideration. Since a copy of all of the references is too lengthy to be faxed, a further copy of the forms with the references attached thereto is being delivered to the Patent Office as well.

Claim Rejections under 35 U.S.C. §§102 and 103

In the Office Action, claims 1-4 were rejected based on Manganiello (U.S. Patent No. 6,050,445) and Freeman (U.S. Patent No. 5,050,758). Further thereto, claim 1 has been amended as set forth above.

Amended claim 1 recites a no-spill drinking apparatus having a valve, wherein a post extends through an opening in a flexible material, and wherein the flexible material begins to invert upon application of negative pressure to that flexible material. It is submitted that none of the references of record teach or suggest a no-spill drinking apparatus having such features, whether the references are considered individually or properly considered in combination.

It is noted that several means are further disclosed in the application to prevent fluid flow in the closed position, and are consistent with the claims. For example, the opening can press against a center stop, as recited in new dependent claims 66-68.

Serial No. 10/083,656 filed February 25, 2002
Amendment dated January 18, 2007
Response to Office Action of August 10, 2006

It is likewise noted that, to infringe the independent claims, the post does not need to seal the opening in the valve's closed position. A requirement that the post tightly extend through the opening in the closed position is only recited in amended dependent claims 40 and 58. The other claims do not require or recite that limitation.

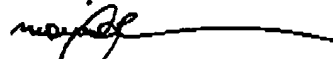
These notes are presented herein since the Defendants in recent litigation have attempted to unduly limit the scope of applicant's inventions by reading limitations into the claims to avoid liability for their infringement. Thus, for the record, it is expressly requested and intended by applicant that no limitations be read into any of the claims other than those explicitly written in the claim language above. Applicant likewise is confirming herein his understanding that the Patent Office is applying to the claim terms the broadest reasonable meaning consistent with the specification, as is the Office's established practice. Manual of Patent Examining Procedure §2111; *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000) (During patent examination, the pending claims are given their broadest reasonable interpretation consistent with the specification). It is requested that the Patent Office so indicate in writing if any further limitations are being read in or any narrowing meaning or construction is being applied (and absent such an indication, no such further limitations or narrowing constructions will be understood to be applicable).

It is respectfully submitted that all of the claims present allowable subject matter. Should the Examiner have any questions regarding the application or be contemplating any action that could require further prosecution, a telephonic or in-person interview is requested so that any further issues can be quickly addressed and/or an Examiner's Amendment entered to complete prosecution and forward the application to issuance.

Accordingly, favorable action on the application is respectfully requested.

Dated: January 18, 2007

Respectfully submitted,



Morris E. Cohen (Reg. No. 39,947)
1122 Coney Island Avenue, Suite 217
Brooklyn, New York 11230
(718) 859-8009 (telephone)
(718) 859-3044 (facsimile)